

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

EUGENE BLAKE, et al.,

Plaintiffs,

v.

CIVIL ACTION NO. 2:08-cv-00906

JAMES RUBENSTEIN, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

Pending before the Court are Defendants James Rubenstein, David Ballard, C.J. Rider, and the Department of Military Affairs & Public Safety Division of Corrections' Motion to Dismiss Plaintiffs' Complaint (the "Rubenstein Motion to Dismiss"), (ECF No. 69), Defendants Glenn McGarry, Kerri Coleman and Aramark Correctional Services, LLC's Motion to Dismiss Plaintiffs' Complaint (the "McGarry Motion to Dismiss"),¹ (ECF No. 108), Plaintiffs' Motion for Summary Judgment, (ECF No. 135), Plaintiff Lennis Angel's Request to Withdraw from Above-Styled Cased ("Plaintiff Angel's Request"), (ECF No. 139), Plaintiff Rose's Amendment to Petition, in which he requests injunctive relief ("Plaintiff Rose's Amendment"), (ECF No. 168), Plaintiff Wilson's Motion to Be Removed from Civil Lawsuit ("Plaintiff Wilson's Motion"), (ECF No. 211), and Plaintiff Plumley's letter-form motion ("Plaintiff Plumley's Motion"), in which he requests "to withdraw" from this case, (ECF No. 217). By Standing Order filed in this case on July 9, 2008, this action was referred to United States Magistrate Judge Mary E. Stanley for submission

¹ Defendants entitled the McGarry Motion to Dismiss as "Defendants, Glenn McGarry's, Kerri Coleman's and Aramark Correctional Services, LLC's Motion to Dismiss Plaintiff's Complaint." (ECF No. 108 at 1.)

of proposed findings and recommendations for disposition. (ECF No. 30.) By an order entered on August 27, 2008, the referral of this matter was transferred to United States Magistrate Judge R. Clarke VanDervort. (ECF No. 47.) By an order entered on April 5, 2016, the Clerk then transferred the referral of this matter to United States Magistrate Judge Omar J. Aboulhosn. (ECF No. 219.) On the same date, Magistrate Judge Aboulhosn entered proposed findings and recommendations (the “PF&R”), in which he recommends that the Court (1) grant Plaintiff Angel’s Request, Plaintiff Wilson’s Motion, and Plaintiff Plumley’s Motion; (2) construe the Rubenstein Motion to Dismiss and the McGarry Motion to Dismiss as motions for summary judgment and grant these motions; (3) deny Plaintiffs’ Motion for Summary Judgment; (4) deny Plaintiff Rose’s Amendment; and (5) dismiss Plaintiffs’ Complaint. (ECF No. 224 at 75–76.)

The Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of de novo review and Plaintiffs’ right to appeal this Court’s order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984).

Objections to the PF&R in this case were due by April 22, 2016. (*See* ECF No. 224 at 76.) To date, no party has filed objections to the PF&R.²

The Court **GRANTS** Plaintiff Angel’s Request, (ECF No. 139), Plaintiff Wilson’s Motion, (ECF No. 211), and Plaintiff Plumley’s Motion, (ECF No. 217), to the extent that each of these Plaintiffs request to withdraw from this case, **CONSTRUES** the Rubenstein Motion to Dismiss,

² The Court notes that, subsequent to Magistrate Judge Aboulhosn filing the PF&R, a third party—Thomas A. Drescher—filed a document entitled “Recommendation for Dismissal Without Prejudice.” (ECF No. 226.) As Mr. Drescher is not a party in this case, the Court finds that it would be inappropriate to construe his filing as objections to the PF&R. The Court shall therefore not further address any specific arguments raised by Mr. Drescher in this filing.

(ECF No. 69), and the McGarry Motion to Dismiss, (ECF No. 108), as motions for summary judgment and **GRANTS** the relief requested in both of these motions to the extent that each seeks dismissal and/or summary judgment, **DENIES** Plaintiffs' Motion for Summary Judgment, (ECF No. 135), and Plaintiff Rose's Amendment, (ECF No. 168), **DISMISSES** Plaintiffs' Complaint, (ECF No. 25), and this case, in its entirety, and **DIRECTS** the Clerk to remove this matter from the Court's docket.

IT IS SO ORDERED.

The Court **DIRECTS** the Clerk to send a copy of this Memorandum Opinion and Order to counsel of record and any unrepresented party.

ENTER: September 28, 2016



THOMAS E. JOHNSTON
UNITED STATES DISTRICT JUDGE